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PARADISO, JOHN ROGER	
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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/728,395
Filing Date: December 01, 2000
Appellant(s): MILLS, PAUL

David L. Schuler
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 9/14/2005 appealing from the Office action mailed 9/9/2004.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

Claim Rejections - 35 USC § 102

Claims 1, 2, and 6 are rejected under 35 U.S.C. 102(e) as being anticipated by KOMIYA ETAL (US Patent 6155025).

KOMIYA ET AL discloses a packaging system in which articles (12) are packaged into boxes (30) and printers print indicia (40) on the sides of the boxes to indicate the type and quantity of the articles packaged within in a first section of the system. The boxes are conveyed to a second section where they are then grouped (310) and then conveyed to a third section where the groups are packaged into pallet loads (320). A controller (66) sends signals to each of the elements of the system. (See KOMIYA ET AL columns 4-6 and 9-12 and figures 1, 2, and 19.)

Note that KOMIYA ET AL does not specifically refer to the data bus that transmits signals and translations of commands from the controller to the peripheral units; however, these limitations are inherent in the invention of KOMIYA ET AL: The connecting of all elements of a machine with a controller, such as connecting a printer or floppy drive to a computer's CPU or connecting remote sensors and machine control circuits to a PLC, is inherent in structure and is necessary when any components are connected via a data bus to a controller. The same principle applies to a means for translating data bus commands: if this were not so, the above example of a computer would not be able to communicate with or recognize the printer or floppy drive and the example of a machine with remote sensors and control circuits would not be able to communicate or receive instructions from the PLC.

Claim Rejections - 35 USC § 103

Claims 3-5 and 7-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over KOMIYA ET AL.

KOMIYA ET AL discloses a packaging system in which articles (12) are packaged into boxes (30) and printers print indicia (40) on the sides of the boxes to indicate the type and quantity of the articles packaged within in a first section of the system. The boxes are conveyed to a second section where they are then grouped (310) and then conveyed to a third section where the groups are packaged into pallet loads (320). A controller (66) sends signals to each of the elements of the system via a data bus.

KOMIYA ET AL does not specifically disclose marking the weight or size of the articles packed within a box, labels for the pallet, a virtual data bus, or the specifics of the control means' signals.

However, Appellant is given Official Notice that the marking of weight and size of articles on the packaging of packed articles is notoriously well known in the art (for instance, the weight of packaged foods, the dimensions of packaged furniture, etc.) and it would have been obvious to one of ordinary skill in the art at the time the invention was made to label the boxes of KOMIYA ET AL in order to provide the consumer with the most information possible about the packaged article, enabling the consumer to understand the contents without the need of unpacking them.

Regarding claim 3, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use thermal transfer printers or laser printers or label printers in place of the inkjet printers in the invention of KOMIYA ET AL since the Examiner takes Official Notice of the equivalence of each of the aforementioned types of printers for their use in printing indicia in the packaging art and the selection of any of these known equivalents would be within the level of ordinary skill in the art.

Regarding claim 10, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use any of the recited data transfer protocols since Appellant has not disclosed that the use of any of the particular data transfer protocols solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with any data transfer protocol that allows most efficient and effective communication between the controller and the elements of the system.

Regarding claim 11, Appellant is given Official Notice that the use of virtual transmissions (radio, infrared, etc.) to transmit data is well known in the art (and in everyday life, for instance, TV remote controls, etc.) and it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a virtual data bus to control the elements of KOMWA ET AL in order to reduce the need for physical cabling and increase the adaptability of the physical system.

(10) Response to Argument

Appellant states on pages 6-7 of his Response that "Komiya does not disclose or suggest a 'respective connecting means' for each of a first, second, and third marking means and for collecting the plurality of packs into a single packaged unit where each respective collecting means includes a 'means to translate data bus commands appropriate to that component into a command protocol which is read by the connected component which responds by performing a productive function, whereby the control means is able to control each of the connected components independent of command protocols recognized by the connected components.'

However, since the different components are present (please see description in Section 9 above), it is only the command bus and the protocols used for communication that are in dispute. Examiner has stated in Section 9 above that these limitations are inherent in the invention of KOMIYA ET AL:

> "The connecting of all elements of a machine with a controller, such as connecting a printer or floppy drive to a computer's CPU or connecting remote

> sensors and machine control circuits to a PLC, is inherent in structure and is necessary when any components are connected via a data bus to a controller. The same principle applies to a means for translating data bus commands: if this were not so, the above example of a computer would not be able to communicate with or recognize the printer of floppy drive and the example of a machine with remote sensors and control circuits would not be able to communicate or receive instructions from the PLC."

In other words, if KOMIYA ET AL didn't have a data bus (a wire or strip or cable or something) to transfer commands and a protocol for interpreting those commands, it wouldn't work. Similarly, neither would your desktop PC or the Programmable Logic Controller on the production line that produced the Post-It® pad on your desk.

Appellant states on page 7 of his Response that "Rather than operating like the invention as recited in claim 1, the system of Komiya could (1) rely on equipment being replaced by equipment which operates according to the same protocol as the replaced equipment or (2) rely on reprogramming of the computer controller.

However, while Appellant's Specification points out that the implementation of his invention in a plant or factory would obviate the need for replacing any equipment or for reprogramming an existing computer controller, those are benefits of use and are not set forth in the claim language of the invention itself. Claim 1 lines 14-21 recite a "control means also connected to the data bus, the control means sending appropriately addressed data bus commands ... to each of the connected components, the data bus commands all using a common computer protocol, and each of the connecting means ... including means to translate data bus commands [read in the examples used above as signals sent over ribbon cables to a floppy or printer, for example] appropriate to that component into a command protocol which is read by the connected component..."

Appellant states on page 7 of his Response that "As provided in Mr. Mills' statement, the 'connecting means' and 'means to translate' of claim 1 are not only not necessarily present, but rather, it is more likely that the Komiya system would be implemented differently."

However, Examiner has explained above that no matter how a system is implemented (meaning, whether it installed as a turnkey system or if a legacy controller is reprogrammed to accommodate new components) the system in use must communicate from a controller to a peripheral (an indicia printer, for instance) over a command bus (be it a wire, a ribbon cable, an optical bundle, etc.) or it won't work. This aspect is therefore inherent in any system of this nature, including KOMIYA ET AL.

Appellant states on page 8 of his Response that ".. when the 'means to translate data bus commands' limitation is afforded the broadest reasonable scope in view of the supporting specification and corresponding structure, material or acts described therein, the rejection based on Komiya should be withdrawn. In particular, the 'means to translate data bus commands' limitation includes 'whereby the control means is able to control each of the connected components independent of command protocols recognized by the connected components.' Nothing in Komiya discloses, teaches or suggests this feature."

However, Examiner maintains if KOMIYA ET AL didn't have a data bus (a wire or strip or cable or something) to transfer commands and a protocol for interpreting those commands, it wouldn't work. Regardless of the communication protocols needed, the controller in the invention of KOMIYA ET AL does indeed communicate commands to each of its peripherals.

Similarly, your desktop PC sends commands to floppy drives, CD drives, printers, etc. regardless of the protocol or drivers needed.

Appellant states on page 10 of his Response that "Appellant respectfully disagrees with the Examiner's conclusion that, to one of ordinary skill in the art, the subject matter of claims 3-5 and 7-13 would have been obvious in view of Komiya. Nowhere does Komiya suggest 'respective connecting means' and the 'means to translate' limitation as recited in claim 1, from which claims 3-5 and 7-13 depend.

However, the reasoning in the '103 rejection above was to show the obviousness of curing the deficiencies of KOMIYA ET AL because KOMIYA ET AL does not specifically disclose marking the weight or size of the articles packed within a box, labels for the pallet, a virtual data bus, or the specifics of the control means' signals. The limitations Appellant is addressing here has been summarized and explained in the above paragraphs with reference to the inherency of these features in the '102 rejection.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Rinaldi I. Rada
Supervisory Patent Examiner
Group 3700

Examiner John Paradiso

Conferees:

Expert Primary Examiner John Sipos

Primary Examiner Louis Huynh